

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

John D. McIntosh
SSN XXX-XX-7126

Carol Y. McIntosh
SSN XXX-XX-2596

Debtor.

CASE NO. 04-50768 GFK

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. TCF Mortgage Corporation (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 8, 2004, at 1:30 p.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 2, Fourth Floor of the above entitled Court located at U.S. Courthouse, 515 West First Street, Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 2, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than August 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 2, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$75,000.00, as evidenced by that certain mortgage deed dated February 16, 1999, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated February 16, 1999, executed by J. D. McIntosh and Carol Y. McIntosh, husband and wife, recorded on February 23, 1999, as Document No. 219356, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Yellow Medicine County, Minnesota and is legally described as follows to-wit:

Part of Lot Five (5), Block One (1) of Hacker Heights in Section Nineteen (19), Township One Hundred Seventeen (117) North, Range Forty (40) West, described as follows: Beginning at the Southeast corner of said Lot Five (5) in Block One (1); thence in a Northwesterly direction along the Southwesterly boundary line of said Lot Five (5) a distance of Two hundred Fifty (250) feet; thence in a Northeasterly direction a distance of Two Hundred (200) feet to a point which is distant One Hundred Seventy-Five (175) feet in a Northwesterly direction from the Easterly boundary line of said Lot Five (5); thence in a Southeasterly direction a distance of One Hundred Seventy-Five (175) feet to a point on the easterly boundary line of Lot Five (5) which is Two Hundred Forty-Five (245) feet North of the Southeast corner of said Lot Five (5) as measured along the Easterly boundary line of said lot; thence South along the East line of said Lot Five (5) a distance of Two Hundred Forty-Five (245) feet to the point of beginning.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of August 17, 2004, Debtor is delinquent in the making of monthly payments as required for the months of March, 2004 through August, 2004, inclusive, in the amount of \$881.00 each; accruing late charges of \$163.30 and attorneys fees and costs of \$675.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 17th day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

FROM :

FAX NO. :

Jul. 15 1998 09:29PM P5

BOOK 223 PAGE 250

(2)

Registration Tax Herein of \$ 172.50
 paid this 23rd day of Feb. 1999
 No. 11797 Joanna Cheyka
 County Treasurer

Countersigned:
Joanna Cheyka by Paula Rosen
 County Auditor

219356
 OFFICE OF COUNTY RECORDER }
 County of Yellow Medicine, Minn. }
 I hereby certify that the within instrument
 was filed in this office for record on the 23
 day of Feb. A.D. 1999 at 10:10
 o'clock A. M. and was duly recorded in book
223 of Regd. Page 250
Kay Nerdahl
 County Recorder
by Paul Rosen
 Deputy

(Sign Above This Line for Recording Date) 2/19/99 ENB, MN

TCP 611071573

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on February 16th 1999. The mortgagor is
J.P. McIntosh and Carol Y. McIntosh, husband and wife

("Borrower").

This Security Instrument is given to First National Bank in Montevideo

which is organized and existing under the laws
 of United States of America, and whose address is 101 S. 1st St. P.O. Box 658
Montevideo, MN 56255 ("Lender"). Borrower owes Lender the principal cash of
Seventy Five Thousand and 00/100 Dollars

(U.S. \$ 75,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument
 ("Note"), which provides for installment ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and
 payable on March 1, 2014 and for interest at the yearly rate of 6.500 percent. This Security Instrument
 secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of
 the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument;
 and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose,
 Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in

Yellow Medicine County, Minnesota:

see attached legal description.

which has the address of RR 4 Box 281M Montevideo
56255 ("Property Address");
 Minnesota 56255 (City)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now
 or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing
 is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and
 convey the Property and that the Property is unencumbered, except encumbrances of record. Borrower warrants and will defend generally
 the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by
 jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due
 the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to
 Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and
 assessments which may attach prior to this Security Instrument as a lien on the Property; (b) yearly household payments or ground
 rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly
 mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph
 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items". Lender may, at any time, collect and
 hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's
 escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C.
 § 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount, if so, Lender may, at any time, collect
 and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current
 data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

EXHIBIT A

FROM :

FAX NO. :

Jul. 15 1998 09:38PM P6

BOOK 223 PAGE 254

25. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

(Check applicable box(es))

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rate Improvement Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Other(s) (specify) | | |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

J D McIntosh (Seal)
Borrower J D McIntosh

Carol Y McIntosh (Seal)
Borrower Carol Y McIntosh

(Space Below This Line For Acknowledgement)

STATE OF Minnesota, Chippewa County ss:

On this 18th day of February, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared J D McIntosh and Carol Y McIntosh, husband and wife

(known to me) (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the foregoing instrument and acknowledged that they executed the same.

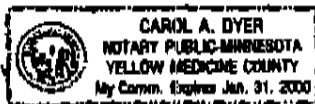
WITNESS my hand and official seal.

(Reserved for official seal)

Signature: *Carol A Dyer*

Name (typed or printed)

My Commission expires:



This instrument was drafted by:
First National Bank in
Montevideo
101 S. 1st St. P.O. Box 858
Montevideo, MN 56265

FROM :

FAX NO. :

Jul. 15 1998 09:31PM P7

Part of Lot Five (5), Block One (1) of Hacker Heights in Section Nineteen (19), Township One Hundred Seventeen (117) North, Range Forty (40) West, described as follows: Beginning at the Southeast corner of said Lot Five (5) in Block One (1); thence in a Northwesterly direction along the Southwesterly boundary line of said Lot Five (5) a distance of two hundred fifty (250) feet; thence in a Northeasterly direction a distance of two hundred (200) feet to a point which is distant one hundred seventy-five (175) feet in a Northwesterly direction from the Easterly boundary line of said Lot Five (5); thence in a Southeasterly direction a distance of one hundred seventy-five (175) feet to a point on the Easterly boundary line of Lot Five (5) which is two hundred forty-five (245) feet North of the Southeast corner of said Lot Five (5) as measured along the Easterly boundary line of said lot; thence South along the East line of said Lot Five (5) a distance of two hundred forty-five (245) feet to the point of beginning.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

John D. McIntosh
SSN XXX-XX-7126
Carol Y. McIntosh
SSN XXX-XX-2596

CASE NO. 04-50768 GFK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of August 17, 2004, Debtor is delinquent for monthly payments for the months of monthly payments as required for the months of March, 2004 through August, 2004, in the amount of \$881.00 each; accruing late charges of \$163.30 and attorneys fees and costs of \$675.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to a second mortgage in favor of First National Bank in Montevideo in excess of \$91,490.04.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

. . .

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 17th day of August, 2004.

WILFORD & GESKE

By /s/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

AUG-02-2004 MON 03:31 PM McCalla Raymer

FAX NO. 7703968422

P. 02

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

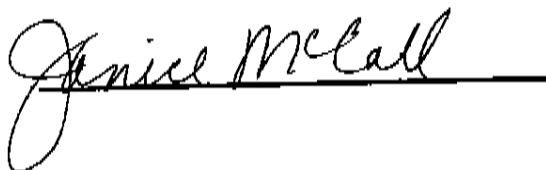
In Re:

AFFIDAVIT OF PETITIONER

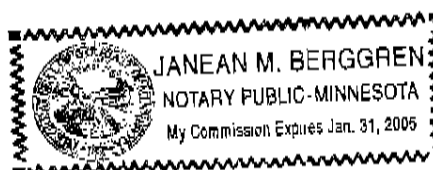
Debtor

Chapter 7 Case No. 04-50768
-----STATE OF MINNESOTA)COUNTY OF HENNEPIN)

JANICE MCCALL, being first duly sworn, deposes and states she/he is the authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.



Subscribed and sworn to before me this
4TH day of AUGUST, 2004.


Notary Public

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

John D. McIntosh
SSN XXX-XX-7126
Carol Y. McIntosh
SSN XXX-XX-2596

CHAPTER 7 CASE

CASE NO. 04-50768 GFK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on August 17, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Janice McCall, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

John D. McIntosh
Carol Y. McIntosh
65066 Boundary Line Rd
Askov, MN 55704

TCF Mortgage Corporation
c/o McCalla, Raymer, et. al.
Bankruptcy Department
1544 Old Alabama Road
Roswell, GA 30076

Daniel R. Bina
Rte 4 Box 205E
Pine City, MN 55063

Robert R. Kanuit
4815 W Arrowhead Rd Ste 230
Hermantown, MN 55811

First National Bank in Montevideo
PO Box 658
101 S 1st St
Montevideo, MN 56265-1410

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 17th day of August, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

John D. McIntosh
SSN XXX-XX-7126
Carol Y. McIntosh
SSN XXX-XX-2596

CHAPTER 7 CASE

CASE NO. 04-50768 GFK

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of TCF Mortgage Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 8, 2004, at U.S. Courthouse, 515 West First Street, Duluth, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated February 16, 1999, executed by J. D. McIntosh and Carol Y. McIntosh, husband and wife, recorded on February 23, 1999, as Document No. 219356 covering real estate located in Yellow Medicine County, Minnesota, legally described as follows, to-wit:

Part of Lot Five (5), Block One (1) of Hacker Heights in Section Nineteen (19), Township One Hundred Seventeen (117) North, Range Forty (40) West, described as follows: Beginning at the Southeast corner of said Lot Five (5) in Block One (1); thence in a Northwesterly direction along the Southwesterly boundary line of said Lot Five (5) a distance of Two hundred Fifty (250) feet; thence in a Northeasterly direction a distance of Two Hundred (200) feet to a point which is distant One Hundred Seventy-Five (175) feet in a Northwesterly direction from the Easterly boundary line of said Lot Five (5); thence in a Southeasterly direction a distance of One Hundred Seventy-Five (175) feet to a point on the easterly boundary line of Lot Five (5) which is Two Hundred Forty-Five (245) feet North of the Southeast corner of said Lot Five (5) as measured along the Easterly boundary line of said lot; thence South along the East line of said Lot Five (5) a distance of Two Hundred Forty-Five (245) feet to the point of beginning

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court